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PATENT
Attorney Docket No. 401225

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of:

HOSONO et al.

Application No. 09/871,976

Filed: June 4, 2001

Art Unit: 2822

Examiner: T. Tran

For: CARBON BODY, PROCESS FOR
PRODUCING THE CARBON BODY, AND
ELECTRIC FIELD EMISSION ELECTRON
SOURCE USING THE CARBON BODY

PETITION FROM DRAWING OBJECTION

Commissioner for Patents
U.S. Patent and Trademark Office
220 20th Street S. Customer Window, Mail Stop
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Dear Sir:

Applicants petition, pursuant to 37 CFR 1.181(a)(1), from a drawing objection made by the Examiner in an Office Action mailed August 10, 2004. The Examiner was requested to reconsider this rejection in a response filed October 26, 2004, but the objection was maintained in an Advisory Action mailed November 12, 2004. This application is also the subject of a pending appeal.

The subject matter of this patent application is a novel structure of carbon and a method of making that structure. In general, as illustrated by the embodiment shown in Figure 3 of the patent application, the structure includes a substrate and a body consisting essentially of carbon that is disposed on the substrate. The body consisting essentially of carbon has a number of continuously connected intersecting walls transverse to the substrate. In the embodiment of Figure 3, the walls 3 are transverse to the substrate 1 and it can be seen that those walls are continuous and that they intersect, defining openings confined by the walls. The openings generally extend to the substrate 1. This arrangement is described in claim 21.

Claim 22, which depends from claim 21, also describes the structure as including "a continuous film in the openings at the substrate". An example of such an embodiment is illustrated in Figure 10 of the patent application. In that structure, the openings between the intersecting walls are partially filled with a film 5 essentially of carbon. Referring to that Figure 10, the film is designated as 3b and the walls protrude above the film by a distance 3c.

The drawings were objected to on the grounds that a claimed structural detail is not shown in any drawing figure. According to the Office Action mailed August 10, 2004, the drawings were objected to because “they fail to show a ‘continuous film’ as described in the specification.” See the Office Action at page 2.

What is shown in Figure 10 of the patent application is described at page 22 of the patent application in lines 1-5. The second of two sentences in this passage is particularly the focus of the objection to the drawings.

“As shown in Fig. 10, in this film, the continuous portion 5 is formed in a base 3b in the state that the portion is embedded in openings 4.”

In the Advisory Action, in response to Applicants’ request for further explanation of the drawing objection if the drawing objection were maintained, the Examiner stated that the argument presented against the objection was not persuasive

“Because Applicant inconsistently numbering [sic] the ‘continuous film’, for example: Applicant argued that a ‘continuous film’ is referenced at 5, however, in the specification of the invention [sic], number 5 is used for indicating a ‘continuous portion’ not a ‘continuous film’. Applicant should use the same number for indicating the same item”.

Evidently the drawing objection is based upon the reference in the specification of the patent application to element 5 as a continuous “portion” and the reference in claim 22 to a continuous “film”. There is no legal requirement that claim terms be identical to the terms of the specification of a patent application. Rather, what is required is that the disclosure of a patent application provide adequate support for the claimed subject matter. It is apparent here, particularly to one of skill in the art, considering the brief description of Figure 10 of the patent application and Figure 10 itself, that the thin continuous body of material 5, that is of the same composition as the walls 3, can be identified as a film without confusion. Moreover, the term “portion” does not precisely describe the characteristics of a film, i.e., an expanse of material having a larger area than thickness. Therefore the language of claim 22 describes more accurately what is shown as element 5 in Figure 10 of the patent application than does the word “portion”, the result of a translation of a foreign-origin specification.

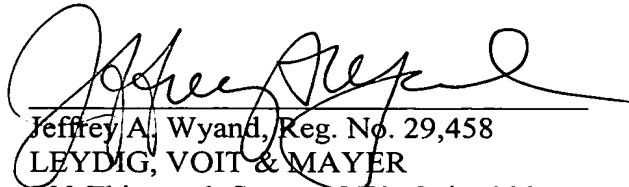
37 CFR 1.83(a) requires that the drawings show every feature of the invention as specified in the claims. Here, it is apparent to a person of skill in the art, from a inspection of Figure 10, and a review of page 22, that element 5 constitutes a continuous film and, therefore,

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provides complete support for claim 22. Accordingly, the drawing objection is erroneous and, upon review, the Examiner should be directed to withdraw the objection.

It is believed that no fee is required to support this Petition. However, any fee should be charged to deposit account 12-1216. A duplicate copy of this page is attached.

Respectfully submitted,



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